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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Debra Morales Ruiz, an individual, for  
 herself and on behalf of and as pending  
 Personal Representative of The Estate of  
 Alexander Chavez; Alex George Chavez,  
 an individual,

Plaintiffs,

vs.

County of Maricopa, a governmental  
 entity; Brandon Smith and Jane Doe  
 Smith; Paul Penzone and Jane Doe  
 Penzone; David Crutchfield, an individual;  
 Lisa Struble, an individual; Kyle Moody  
 and Jane Doe Moody; Arturo Dimas and  
 Jane Doe Dimas; Tyler Park and Jane Doe  
 Park; Gerardo Magat and Jane Doe Magat;  
 Daniel Hawkins Jr. and Jane Doe  
 Hawkins; Javier Montano and Jane Doe  
 Montano; James Dailey and Jane Doe  
 Dailey; Trevor Martin and Jane Doe  
 Martin; Greggory Hertig and Jane Doe  
 Hertig; John Chester and Jane Doe  
 Chester; Jorge Espinosa Jr. and Jane Doe  
 Espinosa; Morgan Rainey and John Doe  
 Rainey; Stefanie Marsland and John Doe  
 Marsland; and, John and Jane Does 1-40,

Defendants.

No.: CV-23-02482-PHX-SRB (DMF)

**PLAINTIFFS' MOTION TO EXTEND  
 TIME TO SERVE DEFENDANTS  
 ESPINOSA WITH PROCESS, AND  
 TO DO SO VIA PUBLICATION**

(Assigned to the Honorable Susan R.  
 Bolton and referred to the Honorable  
 Deborah M. Fine)

1 Through counsel undersigned and pursuant to Federal Rule of Civil Procedure 4,  
2 Plaintiffs Debra Morales Ruiz, The Estate of Alexander Chavez, and Alex George Chavez  
3 (collectively, “Plaintiffs”) hereby move to extend the time period within which they may  
4 serve Defendants Jorge Espinosa Jr. and Jane Doe Espinosa (“Defendants Espinosa”) with  
5 process by forty-five (45) days, and to be permitted to do so via publication, in accordance  
6 with the Proposed Order submitted concurrently herewith. This Motion is supported by  
7 the relevant parts of the record in this matter, the Declaration of Sean A. Woods attached  
8 as “**Exhibit 1**” hereto, and the Memorandum of Points and Authorities below.  
9

## 10 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 11 **I. RELEVANT FACTS**

12 Plaintiffs originally filed this action in Arizona state court on August 8, 2023.  
13  
14 Compl. at 1, ECF No. 1-1. Plaintiffs were ultimately able to serve every Defendant named  
15 in their original Complaint except for Defendants Gerardo and Jane Doe Magat, James and  
16 Jane Doe Dailey, and Jorge (Jr.) and Jane Doe Espinosa (the “Ex-Employee Defendants”),  
17 because those Defendants were no longer active with the Maricopa County Sheriff’s  
18 Department. On November 29, 2023, the served Defendants removed this action to this  
19 Court. Notice of Removal, ECF No. 1.  
20

21  
22 On April 4, 2024, Plaintiffs filed a motion seeking to extend the time to serve the  
23 Ex-Employee Defendants with process. Pls.’ Mot. Extend Time Serve, ECF No. 17. The  
24 Court granted that Motion on April 25, 2024, extending the time for service by thirty (30)  
25 days. Order, ECF No. 18. That gave Plaintiffs until up to and including May 28, 2024 –  
26 the next business day after the Memorial Day federal holiday – to serve the Ex-Employee  
27  
28

1 Defendants. Plaintiffs were able to locate and serve Gerardo Magat, Jane Doe (Ina) Magat,  
 2 James Dailey, and Jane Doe (Shawna) Dailey during that period. Certificates of Service,  
 3 ECF Nos. 21-24.  
 4

5 However, Plaintiffs were unable to serve Defendants Espinosa with process during  
 6 that period because they were unable to determine their location. Unfortunately, because  
 7 “Jorge Espinosa” is an extremely common name in the Phoenix area, Plaintiffs’  
 8 background checks and other standard search methods were not successful in locating  
 9 them. *See Ex. 1*. Thus, they remain unserved.  
 10

## 11 **II. LEGAL ARGUMENT**

### 12 **A. The Court *Must*, Or at Least *Should*, Extend the Time to Serve** 13 **Defendants Espinosa With Process.**

14 “Rule 4(m) of the Federal Rules of Civil Procedure provides that ‘if the plaintiff  
 15 shows good cause for the failure [to serve], the court *must* extend the time for service for  
 16 an appropriate period.’” *MLB Sales Inc. v. Rk Gems LLC*, No. CV-23-01526-PHX-DWL,  
 17 at \*3 (D. Ariz. Nov. 30, 2023) (emphasis added) (quoting Fed. R. Civ. P. 4(m)). Here,  
 18 good cause exists to extend the time for service because Plaintiffs have been unable to  
 19 locate an address for Defendants Espinosa, despite background checks and utilization of  
 20 their normal search methods, as a result of “Jorge Espinosa” being an extremely common  
 21 name in the Phoenix area. *See Ex. 1*.  
 22

24 Nevertheless, even if good cause does *not* exist for an extension (and it certainly  
 25 does), “District courts also have ‘*broad*’ . . . discretion to extend the service deadline ‘*even*  
 26 *in the absence of good cause.*’” *MLB Sales*, No. CV-23-01526-PHX-DWL, at \*3  
 27 (emphasis added) (quoting *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007));  
 28

1 *Arellano v. San Luis*, No. CV-16-03423-PHX-DGC, at \*7 (D. Ariz. May 8, 2017) (“[E]ven  
 2 without a showing of good cause, a district court may utilize its broad discretion to extend  
 3 the time for service.” (quoting *United States v. 2,164 Watches*, 366 F.3d 767, 772 (9th Cir.  
 4 2004))); *see also* *Dimitrov v. Stavatti Aerospace Ltd.*, No. CV-23-00226-PHX-DJH, at \*2  
 5 (D. Ariz. Oct. 12, 2023) (“District courts enjoy broad discretion when making extension  
 6 decisions under Rule 4(m).” (citing *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001))).

7  
 8 In considering a discretionary extension request under Rule 4(m), Courts consider  
 9 whether the extension would cause prejudice to defendant(s). *Efaw*, 473 F.3d at 1041.  
 10 Here, there is absolutely no evidence, or reason to believe, that Defendants Espinosa would  
 11 incur prejudice from an additional forty-five (45) day period.

12  
 13 **B. Because Accomplishing Personal Service on Defendants Espinosa,**  
 14 **Including Alternative Service, is Impracticable, Plaintiffs Should be**  
 15 **Permitted to Serve Them Via Publication.**

16 Under the Federal Rules of Civil Procedure, individual Defendants may be served  
 17 by “following state law for serving a summons in an action brought in courts of general  
 18 jurisdiction in the state where the district court is located . . . .” Fed. R. Civ. P. 4(e)(1).  
 19 Thus, Defendants Espinosa may be served pursuant to the Arizona Rules of Civil  
 20 Procedure. Pursuant to those rules, “[i]f a party shows that the service provided by Rule  
 21 4.1(c) through 4.1(k) – including an alternative means of service – is impracticable, the  
 22 court may . . . order that service be accomplished by publication.” Ariz. R. Civ. P. 4.1(l)(1).  
 23 Of Rules 4.1(c) through 4.1(k), only Rules 4.1(d) (governing personal service) and 4.1(k)  
 24 (governing alternative service) are applicable here, and both methods of service are  
 25 impracticable here because Plaintiffs have been unable, despite diligent searching  
 26  
 27  
 28

(including background checks) to find a location where Defendants Espinosa may be served. *See Ex. 1*. Therefore, service by publication, while not ideal, is nevertheless “the best means practicable in the circumstances for providing [Defendants Espinosa] with notice of the action’s commencement . . . .” Ariz. R. Civ. P. 4.1(l)(1)(B).

### III. CONCLUSION

Ultimately, “[c]ourts should give the Rule 4 provisions a liberal and flexible construction.” *Pearson v. GEO Grp. Inc.*, No. CV-16-03094-PHX-DGC (BSB), at \*5 (D. Ariz. Mar. 19, 2018) (citing *Borzeka v. Heckler*, 739 F.2d 444, 446-48 (9th Cir. 1984)). Here, for all the foregoing reasons, the Court should extend the time period within which Plaintiffs may serve Defendants Espinosa with process, and to do so via publication. Because service by publication is not complete until thirty (30) days after the date of first publication, Ariz. R. Civ. P. 4.1(l)(2)(D), Plaintiffs should be granted an additional forty-five (45) days within which to serve them with process via publication, all in accordance with the Proposed Order submitted concurrently herewith.

**RESPECTFULLY SUBMITTED** this 29th day of May 2024.

**MILLS + WOODS LAW, PLLC**

By /s/ Sean A. Woods  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2024, I electronically transmitted the foregoing document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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*/s/ Ben Dangerfield*